

August 3, 2018

## **ENDANGERED SPECIES ACT (ESA) BIOLOGICAL OPINIONS (BiOps)**

### **BACKGROUND**

- The National Marine Fisheries Service (NMFS) issued a final Biological Opinion (BiOp) for three widely used pesticides (chlorpyrifos, diazinon, and malathion) on December 29, 2017. Pursuant to a consent decree, NMFS was required to issue it by the end of 2017.
- The BiOp found jeopardy to 38 species and 37 critical habitat units. For species with Jeopardy, Reasonable and Prudent Measures (RPMs) and Reasonable and Prudent Alternatives (RPAs) are presented.
- NMFS sought a time extension by the court in November that was not granted. Additional time was sought to allow for public input, and to work through concerns raised by EPA, FWS, and stakeholders regarding a variety of technical and methodological issues.
- On January 31, 2018, a Memorandum of Agreement was signed by EPA, DOI (includes FWS), and DOC (includes NMFS), establishing an Interagency Working Group.
- On February 21, 2018, EPA initiated informal consultation with NMFS to continue to develop the methodologies that will guide the consultation process for pesticides. EPA remains in consultation with the U.S. Fish and Wildlife Service for these same three chemicals.
- In March 2018, EPA opened a 60-day public comment period on the NMFS BiOp, including NMFS' jeopardy findings, Reasonable and Prudent Measures (RPMs), and Reasonable and Prudent Alternatives (RPAs). Following commenter's requests for an extension, the comment period was extended until July 23, 2018. EPA is currently reviewing the comments received.

### **ISSUE**

- Historically, the EPA and the Services (Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS)), have been unable to reach consensus on a risk assessment approach.
- Utilization of usage data (instead of maximum allowable use based on the product label) has been a key area of disagreement between EPA and the Services. To date, NMFS has not used usage data as a quantitative input to its effects determinations.
- Additionally, a timeline for implementation of the RPAs and RPMs was not provided.

### **TIMELINE**

- OCSPP leadership is in discussions with NMFS on an implementation timeline for RPAs and RPMs. OCSPP estimates that implementation could take at least 24 – 36 months, assuming agreement by the pesticide registrants.
- OCSPP staff continues to engage with the Services and USDA, with an emphasis on refining the evaluation methods, consistent with the best available science and commercial data, used in completing BEs and BiOps.

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